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End or Close of Promissory Note Within Meaning of Kentucky Statutes Section 468 (KRS 446.060)

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STUDENT NOTES

END OR CLOSE OF PROMISSORY NOTE WITHIN MEANING OF KENTUCKY STATUTES SECTION 468 (KRS 446.060)

Plaintiff loaned his father a large amount of money, receiving in return several promissory notes, two of which were executed at the same time. The signature on both notes is admittedly genuine but one of the notes was signed by the father in the upper left hand corner, the signature being upside down with respect to the rest of the writing, but within the border of the printed form. The evidence tended to show that at the time of the execution of the notes one note was placed on top of the other for convenience in signing, thus causing the maker's signature to be inadvertently misplaced. Appellant contends that the note is invalid because not subscribed at the "end of close" of the writing as required by Kentucky Statutes (Carroll, 1936) Sec. 468. In rejecting appellant's contention the court said: "Where it is manifest on the face of the instrument, as it is in this case, that the maker intended to sign at the end of the instrument but mistakenly or inadvertently signed at another place, the signature will be deemed to have been affixed at the end of the instrument within the meaning of the statute." *Zimmerman* v. *Segal,* 288 Ky. 33, 155 S. W (2d) 20 (1941)

At Common Law it was not necessary that a note be signed at the physical end thereof, if it were clearly evident from the body of the instrument that it was signed by the maker with the intent of authenticating its contents.[1] Apparently, the General Assembly of Kentucky intended to abrogate the common law rule by enacting Sec. 468 of the Kentucky Statutes,[2] which provides:

> "When the law requires any writing to be signed by a party thereto, it shall not be deemed to be signed unless the signature be subscribed at the end or close of such writing."

In face of the unambiguous wording of the statute the Kentucky Court has shown a marked liberality in applying it to both wills and deeds. In *Ward* v *Putnam*[3] a will was admitted to record where the entire disposition of the estate was above the signature of testatrix but following the signature was appointment of executors, the attestation clause, and the date. In *Graham* v. *Edwards*[4] the will in question so completely filled a page as not to leave room at the bottom for testator's signature and he wrote his name on the

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[1] 7 Am. Jurisprudence, Bills and Notes, Sec. 202; 10 C. J. S., Bills and Notes, Sec. 37; 8 C. J., Bills and Notes, Secs. 94, 198 and cases cited in note 32; 20 A. L. R. 394.

[2] Carroll, 1936, (KRS 446.060).

[3] 119 Ky. 889, 85 S. W 179 (1905)

[4] 162 Ky 771, 173 S. W 127 (1915).

marginal line at the side. This was deemed by the court to constitute a "substantial compliance" with the statute on the ground that it was evident from the face of the instrument that the testator intended to authenticate it as a completed expression of his testamentary purposes. *Gentry's Guardian v. Gentry*[4] was the case wherein the grantor's signature to a deed appeared after the acknowledgement clause rather than in the space provided therefor. The court held that although the proper place for the grantor's signature was the line following the testimonium clause, yet the fact that the signature was not so placed was not a violation of the statute requiring the instrument to be signed at its close. Here the court considered the fact that the instrument appeared as a logical whole and found that the evidence established an intention on the part of the grantor to give it authenticity as such.

In *Kelley* v. *J. R. Rice Realty Co.*[5] a writing authorizing an agent to sell "property described on the reverse side of this card" was signed at the bottom of the front side and just below the signature was the word "over" Neither description of the property nor selling price was given except on the reverse side. It was held that since the matter on the reverse side was incorporated in the contract by reference, the signing was sufficient to satisfy the statute. In *Rowe* v. *Ratliff's Heirs,*[7] the vendor signed a title bond near the beginning of the instrument and immediately following his signature was a description of the land conveyed and a statement that the purpose of the vendor's obligation was to assure the vendee of receiving title. In that case the court held that under the circumstances it could not be said that the signature was subscribed at the end or close of the writing within the meaning of the statute. None of the foregoing cases were cited or discussed in the court's opinion.

If it were intended by the legislature that the "end or close" of the writing should be understood to mean the physical end or close, the court has apparently not, with the possible exception of the *Ratliff* case, complied with this intent. However, from a survey of the cases it clearly appears that the Court of Appeals has determined that the legislature intended that the "end or close" should be construed to mean reasonably near the physical end, taking into consideration the signer's intent to authenticate the contents of the instrument as manifested on the face of the instrument. The principal case is the first to be decided under the statute where the instrument involved was a promissory note.[8] In holding that it was manifest on the face of the instrument that the maker intended to sign at the end, the court utilized a test applied in previous cases

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[5] 219 Ky. 569, 293 S. W 1094 (1927).
[6] 235 Ky. 643, 32 S. W (2d) 39 (1930).
[7] 225 Ky. 70, 7 S. W (2d) 852 (1918).
[8] See Note (1928) 16 Ky. L. J. 168, where the writer regretfully expresses the opinion that should a case like the one under consideration ever arise the court would probably be bound by the express wording of the statute.

but not applicable here. In order for the maker's intention to sign at the end to be manifest upon the face of the instrument, the signature should bear a reasonable relation to the actual end of the writing. A signature at the top and in an inverted position with relation to the rest of the note is not a manifestation of such intent but would seem to more nearly indicate a negative intent. This case was really decided on the ground of mistake, an element not provided for in the statute nor appearing in previous cases in which the signer realized where his signature was being placed. While the decision reached by the court is probably just, it cannot be upheld either as a literal interpretation of the statute or as a logical extension of earlier cases, being in effect a readoption of the common law view. In order that the law relating to this subject might retain a semblance of clarity, the court should have referred the plaintiff to equity so that the note might be reformed in accordance with the intention of the maker.[9]

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ARTIFICIAL MEANS OF INCREASING THE FLOW OF OIL AND GAS

Many problems have arisen in the field of oil and gas since Colonel Drake first brought in a small well in 1859.[1] With an increased demand for these products, various methods have been used to increase the flow of oil or gas from a single well, and a problem has arisen as to whether a person has the right to stimulate artificially the flow if a neighbor's supply is thereby diminished.

In discussing artificial means it is well to note that in *Higgins Oil & Fuel Co.* v. *Guaranty Oil Co.*[2] the court said:

> "So far as artificiality is concerned, we do not see the difference between a well and a pump; both are artificial; "

While it is true that all means are artificial, the present discussion is limited to the use of explosives, pumps, and vacuums as artificial means.

The use of explosives, particularly nitroglycerine, is probably one of the most common methods of increasing the flow of oil and gas. In one of the leading cases on the use of this method, *Peoples Gas Co. et al. v. Tyner,* the court said:[3]

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[9] Scales v. Asherbrook, 58 Ky. 358 (1858); Anderson v. Bacon, 8 Ky. (1 Marsh) 48 (1830) Harrison v. Jameson, 26 Ky. 232 (1800); 53 C. J. Reformation of Instruments 921, 23 R. C. L. Reformation of Instruments 314.

[1] KULP, CASES ON OIL AND GAS (1st ed. 1924) Introduction.

[2] 145 La. 233, 82 So. 206, 211, 5 A.L.R. 411 (1919).

[3] 131 Ind. 277, 31 N.E. 59, 60, 16 L.R.A. 443, 31 Am. St. Rep. 433 (1892).